

FUND INSURANCE COMPANY ("Fireman's Fund") was and still is a business corporation

2. At and during all material times hereinafter referred to, plaintiff FIREMAN'S

of contract, breach of bailment and negligence.

Plaintiff seeks recovery for cargo non-delivery, loss and delay caused by defendant's breach

Stat. 3000 T.S. 876, repinted at 49 U.S.C. § 40105 (note) and certain amendments thereto.

International Transportation by Air, signed October 29, 1929 ("the Warsaw Convention") 49

United States, specifically, the Convention for the Unification of Certain Rules Relating to

1. There is federal question jurisdiction, as the claim arises under a treaty of the

Court upon information and belief, as follows:

AIR LINES, INC., by its attorneys BADIAK & WILL, LLP, sets forth and alleges to this

INTERNATIONAL FREIGHT SERVICES, LTD., complaining of the defendant, DELTA

Plaintiff FIREMAN'S FUND INSURANCE COMPANY, as subrogee of PHOENIX

-----X
Defendant.

DELTA AIR LINES, INC.,

-against-

Plaintiff,

COMPLAINT

FREIGHT SERVICES, LTD.,

as subrogee of PHOENIX INTERNATIONAL

FIREMAN'S FUND INSURANCE COMPANY,

-----X
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT

Our Ref.: 07-H-539-AW

(516) 877-2225

Mineola, New York 11501-4404

106 Third Street

Attorneys for Plaintiff

BADIAK & WILL, LLP

JUDGE RAKOFF

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07 CV

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Stuttgart, Germany, a shipment of mixed machine parts manufactured by Inotec GmbH for

carrier, and on or about October 19, 2006, delivered into its care, custody and control in

6. Phoenix contracted with Delta Air for the latter's services as a common

in business as an air common carrier and forwarder of freight by air for hire.

located at 1030 Delta Boulevard, Department 852, Atlanta, Georgia, 30354, and is engaged

existing under and by virtue of the laws of Delaware, with an office and place of business

AIR LINES, INC. ("Delta Air") was and still is a business corporation duly organized and

5. At and during all material times hereinafter referred to, defendant DELTA

60191.

office and place of business located at 712 North Central Avenue, Wood Dale, Illinois,

corporation duly organized and existing under and by virtue of the laws of Illinois, with an

INTERNATIONAL FREIGHT SERVICES, LTD. ("Phoenix") was and still is a business

4. At and during all material times hereinafter referred to, subrogor PHOENIX

entitled.

action, and brings this action on its own behalf and on behalf of all parties who may be so

defendant, for the non-delivery, loss and delay sustained, and it is entitled to maintain this

otherwise became subrogated to the rights of its assureds, against third-parties, including the

non-delivery and delay sustained by said shipment while in transit, and would be or

0096071601, was obligated under its policies of insurance to pay, and did pay its assured, for

3. Fireman's Fund was the insurer of the cargo, under policy number

10005-1423.

place of business located at One Chase Manhattan Plaza, 37th Floor, New York, New York

duly organized and existing under and by virtue of the laws of California, with an office and

- delivery to STO Corp. in Atlanta, Georgia. Delta Air agreed to transport and carry said shipment by air under Master Bill of Lading 006-48189094, House Bill of Lading VSS-72060553, and deliver it to Atlanta, Georgia on October 19, 2006, to the order of plaintiff's insured and/or agents, all in consideration of freight charges paid or agreed to be paid.
7. On or about October 19, 2006, due solely to the negligence, breach of contract and breach of bailment of defendant Delta Air, said defendant lost the shipment and was unable to locate it and make delivery to plaintiff's insured and/or agents as scheduled, all in violation of said defendant's obligations and duties as a common carrier and forwarder of merchandise by air for hire.
8. Written notice of claim was sent to defendant on October 27, 2006.
9. By reason of defendant's breaches and negligence, STO Corp. was forced to replace the shipment and Phoenix was forced to compensate STO Corp. for the lost shipment.
10. After STO Corp. had replaced the shipment, defendant located the shipment in its warehouse.
11. Phoenix then salvaged and sold the newly discovered shipment to STO Corp. for one-half its original commercial cost, "as is, where is."
12. No acts or negligence on the part of the plaintiff's insured contributed to the loss herein described.
13. All conditions precedent required of the plaintiff and its predecessors-in-interest in said shipment have been performed.
14. By reason of these premises, plaintiff has sustained damages in the amount of \$18,641.50, no part of which has been paid although duly demanded of defendant.

WHEREFORE, Plaintiff demands judgment of defendant in the amount of \$18,641.50, together with pre-judgment interest, costs and such other relief as the Court deems equitable, just and proper.

Dated: Mineola, New York
September 6, 2007

Respectfully submitted,

BADIAK & WILL, LLP

Attorneys for Plaintiff

106 Third Street

Mineola, New York 11501

(516) 877-2225

07-H-539-AW

ALFRED J. WILL (AJW-2485)

By:

